

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

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| IN THE MATTER OF: | ADMINISTRATIVE CONSENT ORDER |
| Troy Elevator, Inc. Wapello County, Iowa | NO. 2008-AQ- 58 NO. 2008-SW- 45 |

TO: Eric Wuthrich, Manager
Troy Elevator, Inc.
104 E. South Street
Blakesburg, Iowa 52536

Robert Newton, Registered Agent
Troy Elevator, Inc.
32730 215th Street
Bloomfield, Iowa 52537

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Troy Elevator, Inc. (Troy Elevator) for the purpose of resolving the air quality and solid waste disposal violations which occurred during the demolition of a building at the Troy Elevator facility in Blakesburg, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Aaron Pickens, Field Office #6
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted

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pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Troy Elevator is a grain and fertilizer dealership located at 104 E. South Street in Blakesburg, Iowa. Troy Elevator also owns similar facilities in Troy, Bloomfield, and Pulaski, Iowa. The Blakesburg facility was formerly known as CB Ag and was recently purchased by Troy Elevator.

2. On July 14, 2008, DNR Field Office 6 received an anonymous complaint stating that Troy Elevator had just burned a building down at the Blakesburg facility. The complainant was interested in knowing if the facility had obtained the proper permits to burn the building.

3. On July 15, 2008, Kurt Levetzow and Aaron Pickens, DNR Field Office 6 environmental specialists, investigated the complaint at the Troy Elevator facility in Blakesburg. They observed an outbuilding located northeast of the main office that was smoldering. They also observed bricks, lumber, shingles, a plastic barrel and other miscellaneous burned and unburned solid waste at the facility. A burn barrel was observed south of the main office. There was evidence that pallets, packaging material and other trade waste had been burned. The field office staff took photographs of the facility.

4. On July 15, 2008, Mr. Pickens contacted Eric Wuthrich, facility manager for Troy Elevator in Blakesburg. Mr. Wuthrich confirmed that the building had been burned on July 14 and that the shingles had not been removed. Mr. Wuthrich also stated that there had not been an asbestos inspection or notification. Mr. Pickens explained that open burning of the type of material observed at the facility was not allowed and that the activities observed during the investigation were violations of the DNR's regulations.

5. On July 16, 2008, Mr. Wuthrich contacted Mr. Pickens and asked if it was acceptable to burn pallets. Mr. Pickens explained that pallets were considered trade waste and could not be burned. Mr. Wuthrich stated the facility would no longer burn.

6. On July 22, 2008, a Notice of Violation letter was issued to Troy Elevator for the violations discovered during the July 15, 2008 investigation. The letter cited the following violations: open burning, improper solid waste disposal, failure to conduct a thorough asbestos inspection, and failure to submit a notification of the demolition. Troy Elevator was required to dispose of all the solid waste at a permitted landfill by September 26, 2008 and to submit the landfill receipts to the field office by that same date. The letter also informed Troy Elevator that the matter was being referred for further enforcement. On September 24, 2008, Troy Elevator submitted the landfill receipts to the DNR for the debris cleanup.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). On July 15, 2008, DNR Field Office 6 observed a building and other solid waste that has been burned at the Troy Elevator facility in Blakesburg. The facility manager admitted that the building had been burned. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

4. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the demolition of the building and the manager for the facility admitted that an asbestos inspection had not been conducted. The above facts indicate a violation of this provision.

5. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the building. The above facts indicate a violation of this provision.

6. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

7. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. On July 15, 2008, DNR Field Office 6 observed that demolition and other solid waste had been improperly disposed of at the Troy Elevator's facility in Blakesburg. The above facts demonstrate noncompliance with this provision.

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V. ORDER

THEREFORE, it is hereby ordered and Troy Elevator agrees to do the following:

1. Troy Elevator shall pay a penalty of \$3,500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$3,500.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - Failure to follow the proper asbestos NESHAP regulations and solid waste disposal regulations by the improper open burning and disposal of the building and the solid waste has allowed Troy Elevator to save time and money. Additionally, Troy Elevator has saved time and money by not properly inspecting the buildings for asbestos and notifying the DNR of the demolition. Based on the above considerations, \$500.00 is assessed for this factor

Gravity of the Violation - Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the burning of the structure. These violations threaten the integrity of the regulatory program because compliance with the open burning, asbestos, and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. \$2,500.00 is assessed for this factor.

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Culpability – Troy Elevator has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Based on the above considerations, \$500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Troy Elevator. For that reason, Troy Elevator waives the rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 24 day of
Dec, 2008.



Troy Elevator, Inc.

Dated this 16 day of
December, 2008.

Barb Stock (Con 10-6 Wapello County); Kelli Book; Marion Burnside; Field Office 6; EPA; VI.C, VII.C.1, and VII.C.4